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COMMENTS

CONSTITUTIONAL VALIDITY OF REGULATIONS CONTROLLING NONCOMMERCIAL DOOR-TO-DOOR CANVASSING AND SOLICITATION

Government often has sought to regulate soliciting and canvassing. A civic motivation to protect citizenry from crime, fraud, and undue annoyance has led to the promulgation of innumerable regulations by states and municipalities. Conversely, the door-to-door dissemination of ideas pervades history as an ennobled vehicle for meagerly financed causes seeking grass roots support.¹ Judicial determinations reflect the strident clash of these competing interests. "Adjustment of the inevitable conflict between free speech and other interests is a problem as persistent as it is perplexing."²

This Comment will explore constitutional challenges to governmental regulation of noncommercial door-to-door canvassing and solicitation. Religious, charitable, social, and political groups have launched numerous, often successful, attacks upon these controls. The United States Supreme Court has held the sale of religious tracts to be incidental to the primary purposes of door-to-door evangelists, and hence outside the scope of commercial solicitation regulations.³ License taxes imposed upon non-commercial canvassers have been ruled unconstitutional as prior restraints upon the exercise of protected first amendment rights.⁴ Ordinances granting unbridled discretion to officials to determine who may solicit, frequently have been voided by judicial decrees.⁵ Equal protection challenges have been pursued less successfully,⁶ while attacks asserting vagueness of statutory language have been vehicles for protecting both political and charitable canvassers from the arbitrary and capricious application of poorly drafted regulations.⁷

1. See *Hynes v. Mayor of Oradell*, 425 U.S. 610, 624-25 (1976) (Brennan, J., concurring).

2. *Niemotko v. Maryland*, 340 U.S. 268, 275 (1951) (Frankfurter, J., concurring).

3. See notes 48-55 and accompanying text *infra*.

4. See notes 58-60 and accompanying text *infra*.

5. See notes 61-90 and accompanying text *infra*.

6. See notes 115-22 and accompanying text *infra*.

7. See notes 129-41 and accompanying text *infra*.

"[A]t common law the presence of a knocker or a bell on the door signified a license to attempt entry, justifying the initial entry by solicitors and peddlers"⁸ To counteract this, courts have traditionally "respected the right of the householder to bar, by order or notice, solicitors, hawkers, and peddlers" from his property.⁹ This right to restrict solicitation has been extended to private owners of housing developments and apartment houses, where the tenant still may admit the solicitors if he so desires.¹⁰ Without additional statutes to control visitors, "[u]nless the householder manifests externally in some way his wish to remain unmolested by the visits of solicitors, it would seem that the solicitor may take custom and usage as implying consent to call where such custom and usage exist."¹¹

To understand noncommercial challenges to regulations, it is vital to recognize the stringent control that the United States Supreme Court has held historically that a community may have over commercial canvassing. *Breard v. Alexandria*¹² is authority for the principle that a city may impose a blanket prohibition upon purely commercial door-to-door solicitation. In *Breard*, the plaintiff, a regional representative for a magazine publisher, was arrested while going from household to household seeking subscriptions. Upon challenge, the Court upheld the ordinance authorizing his arrest, which declared that "going in and upon private residence . . . by solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise"¹³ to seek sales of merchandise was, absent an invitation from the owner or occupant of the premises, a nuisance and punishable as a misdemeanor. The ordinance was upheld in the face of arguments employing

8. *Citizens for a Better Environment v. City of Park Ridge*, 567 F.2d 689, 691 (7th Cir. 1975). See *Breard v. Alexandria*, 341 U.S. 622, 626 (1951).

9. *Rowan v. United States Post Office Dep't*, 397 U.S. 728, 737 (1970). See *Martin v. City of Struthers*, 319 U.S. 141, 147 (1943). Cf. *Hall v. Commonwealth*, 188 Va. 72, 49 S.E.2d 369 (rule adopted by apartment owner with knowledge and acquiescence of tenants forbade all visitors to call on tenants unless name given and announced to tenants from desk in lobby; case has good discussion of cases upholding the barring of solicitors), *appeal dismissed*, 335 U.S. 875 (1948).

10. *People v. Vaughan*, 65 Cal. App. 2d 844, 852, 150 P.2d 964, 968 (1944); *State v. Martin*, 199 La. 39, 48, 5 So. 2d 377, 380 (1941); *Hall v. Commonwealth*, 188 Va. 72, 90, 49 S.E.2d 369, 378, *appeal dismissed*, 335 U.S. 875 (1948). See also *Commonwealth v. Richardson*, 313 Mass. 632, 640, 48 N.E.2d 678, 683 (1943) (Jehovah's Witnesses were forbidden by the landlord to enter when they were in the vestibule, but rang the doorbells anyway and were admitted as the tenants buzzed the door to open it; court held they could not be barred by the landlord after the tenants had admitted them).

11. *Prior v. White*, 132 Fla. 1, 19, 180 So. 347, 355 (1938).

12. 341 U.S. 622 (1951), noted in Comment, *Constitutional Law—Due Process—Freedom of Expression—Commerce Clause—"Green River" Ordinance as Applied to Door to Door Solicitation for Magazine Subscriptions*, 50 MICH. L. REV. 576 (1952).

13. 341 U.S. at 624.

the due process clause, the commerce clause, and the first amendment guarantees of free speech and free press. "Everyone cannot have his own way and each must yield something to the reasonable satisfaction of the needs of all."¹⁴ There is some question as to the continuing validity of *Breard* because of the recent expansion of first amendment protection of commercial speech.¹⁵

The Alexandria, Louisiana, ordinance in question in *Breard* was a "Green River Ordinance," named after the town in Wyoming where litigation was instituted initially against such ordinances.¹⁶ These ordinances have been held only to restrict commercial activity¹⁷ or transactions of a commercial nature.¹⁸ A regulation applied to noncommercial activities may violate first amendment rights even though the same regulation applied to commercial activities may not.¹⁹

Although noncommercial door-to-door solicitation may encompass religious, charitable, social, or political causes, there is no absolute con-

14. *Id.* at 626. See also *Citizens for a Better Environment v. City of Park Ridge*, 567 F.2d 689, 692 (7th Cir. 1975) (discussed at notes 121-24 and accompanying text *infra*).

15. See *Valentine v. Chrestensen*, 316 U.S. 52 (1942), which enunciated the commercial speech doctrine, *i.e.*, such communication is not protected by the first amendment. But see the series of three decisions where the Supreme Court rejected the commercial speech doctrine: *Virginia State Bd. of Pharmacy v. Virginia Citizens Council, Inc.*, 425 U.S. 748 (1976); *Bigelow v. Virginia*, 421 U.S. 809 (1975); *Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Rights*, 413 U.S. 376 (1973). See also J. NOWAK, *HANDBOOK ON CONSTITUTIONAL LAW* 767-80 (1978); Redish, *The First Amendment in the Marketplace: Commercial Speech and the Value of Free Expression*, 39 GEO. WASH. L. REV. 429, 452-58 (1971).

16. See *Green River v. Fuller Brush Co.*, 65 F.2d 112 (10th Cir. 1933). The ordinance in *Green River* stated:

The practice of going in and upon private residences . . . by solicitors, peddlers, hawkers, itinerant merchants and transient vendors of merchandise, not having been requested or invited so to do by the owner or owners, occupant or occupants of said private residences, for the purposes of soliciting orders for the sale of goods, wares and merchandise, and/or for the purpose of disposing of and/or peddling or hawking the same, is hereby declared to be a nuisance, and punishable as such nuisance as a misdemeanor.

Id. at 113. Over 400 cities throughout the country between 1935-1939 adopted ordinances with the same or very similar language prohibiting such door-to-door visitations as nuisances. Redish, *supra* note 15, at 452 n.119. These ordinances have come to be labeled as "Green River Ordinances."

17. *Larsen v. Colorado Springs*, 142 F. Supp. 871, 873 (D. Colo. 1956); *Green River v. Martin*, 71 Wyo. 81, 91, 254 P.2d 198, 199 (1953).

18. *Anchorage v. Berry*, 145 F. Supp. 868, 870 (D. Alaska 1956).

19. *Schneider v. State (Town of Irvington)*, 308 U.S. 147, 163-65 (1939).

stitutional right to enter upon the private premises of another to solicit for one of these purposes.²⁰ This restriction derives from the principle that even fundamental rights protected by the first amendment—religious liberty, freedom of speech, and freedom of the press—are not absolute.²¹ General and nondiscriminatory regulation of time, place, and manner is permitted, but this regulation must be implemented without regard to the content of speech.²² Actions of an individual traveler from household to household need not be objectionable to justify control.²³ It is within the government's police power to enforce reasonable door-to-door soliciting and canvassing regulations²⁴ that will restrict some persons' desired modes of communicating their ideas. It is well established, however, "that when laws may infringe upon sheltered First Amendment freedoms, the Constitution demands that they be held to strict standards of definiteness."²⁵ Ordinarily, duly enacted provisions enjoy a presumption of constitutional validity.²⁶ That presumption, however, does not adhere when there is a question of improper infringement on the exercise of the first amendment rights of religion, speech, and press.²⁷ An ordinance or statute that does more than reasonably regulate the time, place, and manner of the exercise of these rights and encroaches significantly upon first amendment activity

20. *Hynes v. Mayor of Oradell*, 425 U.S. 610, 619 (1976).

21. *Chaplinsky v. New Hampshire*, 315 U.S. 568, 570-71 (1942); *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

22. *Grayned v. City of Rockford*, 408 U.S. 104, 115 (1972); *Martin v. City of Struthers*, 319 U.S. 141, 147 (1943); *Cantwell v. Connecticut*, 310 U.S. 296, 304 (1940); *National Foundation v. City of Fort Worth*, 415 F.2d 41, 45 (5th Cir. 1969), *cert. denied*, 396 U.S. 1040 (1970); *American Cancer Soc'y v. City of Dayton*, 160 Ohio St. 114, 124, 114 N.E.2d 219, 224 (1953).

23. "That a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to . . . incite to crime, or disturb public peace, is not open to question." *Gitlow v. New York*, 268 U.S. 652, 667 (1925).

24. *Hynes v. Mayor of Oradell*, 425 U.S. 610, 616-17 (1976).

25. *Angelico v. Louisiana*, 593 F.2d 585, 588 (5th Cir. 1979). *See Hynes v. Mayor of Oradell*, 425 U.S. 610, 620 (1976); *Smith v. Goguen*, 415 U.S. 566, 573 (1973); *NAACP v. Button*, 371 U.S. 415, 433 (1963).

26. *Goldblatt v. Town of Hempstead*, 369 U.S. 590, 594 (1962); *National Foundation v. City of Fort Worth*, 415 F.2d 41, 46 (5th Cir. 1969), *cert. denied*, 396 U.S. 1040 (1970); *Nestre v. City of Atlanta*, 255 F.2d 401, 403 (5th Cir. 1958) (per curiam); *Standard Oil Co. v. City of Tallahassee*, 183 F.2d 410, 412 (5th Cir.), *cert. denied*, 340 U.S. 892 (1950); *Anchorage v. Richardson Vista Corp.*, 242 F.2d 276, 285 (9th Cir. 1957); *American Cancer Soc'y v. City of Dayton*, 160 Ohio St. 114, 121, 114 N.E.2d 219, 223 (1953); *Seattle v. Rogers*, 6 Wash. 2d 31, 36, 106 P.2d 598, 600 (1940).

27. *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971); *Citizens for a Better Environment v. Village of Schaumburg*, 590 F.2d 220, 224 (7th Cir. 1978), *aff'd*, 100 S. Ct. 826 (1980).

must survive exacting scrutiny under challenge.²⁸ To be upheld, such a regulation must be supported by a compelling state interest.²⁹ Though the major cases have not articulated this test overtly, this has been the manner of judicial examination of regulations unduly limiting noncommercial door-to-door solicitation.

Even when the courts have overturned ordinances, they generally have agreed that serious dangers, as well as nuisances, are threatened by uncontrolled solicitation. While the Supreme Court in *Martin v. City of Struthers*³⁰ voided the ordinance of the steel mill town where many inhabitants worked on "swing shifts"—working nights and sleeping days—the Court admitted:

Ordinances of the sort now before us may be aimed at the protection of the householders from annoyance, including intrusion upon the hours of rest, and at the prevention of crime. Constant callers, whether selling pots or distributing leaflets, may lessen the peaceful enjoyment of a home as much as a neighborhood glue factory or a railroad yard which zoning ordinances may prohibit. . . . In addition, burglars frequently pose as canvassers, either in order that they may have a pretense to discover whether a house is empty, and hence ripe for burglary, or for the purpose of spying out the premises in order that they may return later. Crime prevention may thus be the purpose of regulatory ordinances.³¹

*Cantwell v. Connecticut*³² also warned of the dangers to householders presented by fraudulent solicitation,³³ and *Schneider v. State (Town of Irvington)*³⁴ conceded that fraudulent appeals may be made in the name of religion or charity.³⁵ *Hynes v. Mayor of Oradell*,³⁶ a 1976 Supreme Court opinion which overturned an ordinance limiting political canvassing, cited *Martin* in emphasizing that "the lone housewife, has no way of knowing whether the purposes of the putative solicitor are benign or malignant, and even an innocuous caller 'may lessen the peaceful enjoyment of a home.'"³⁷ Professor Chafee's somewhat acerbic view of door-to-door canvassing makes it seem even less desirable:

28. *Buckley v. Valeo*, 424 U.S. 1, 64-65 (1976). "Whenever a state burdens the freedom of religion, speech, press, assembly, or petition the law must be analyzed under the strict scrutiny required by the First Amendment" J. NOWAK, *supra* note 15, at 675.

29. *Williams v. Rhodes*, 393 U.S. 23, 31 (1968).

30. 319 U.S. 141 (1943).

31. *Id.* at 144.

32. 310 U.S. 296 (1940).

33. *Id.* at 306.

34. 308 U.S. 147 (1939).

35. *Id.* at 164.

36. 425 U.S. 610 (1976).

37. *Id.* at 618 (quoting *Martin v. City of Struthers*, 319 U.S. 141, 144 (1943)).

[O]f all the methods of spreading unpopular ideas, . . . [house-to-house canvassing] seems the least entitled to extensive protection. The possibilities of persuasion are slight compared with the certainties of annoyance. Great as is the value of exposing citizens to novel views, home is one place where a man ought to be able to shut himself up in his own ideas if he desires.³⁸

Despite admitted threats to the sanctity of the home, in ruling to uphold the right of canvassers and solicitors, courts have relied on the historical value of contact made by door-to-door visitation. "Many of our most widely established religious organizations"³⁹ have used travel from house to house as the means of spreading their doctrine. Labor groups in recruiting members, the federal government in selling war bonds, politicians in seeking popular support—all, through canvassing, have engendered positive social results.⁴⁰ "Door-to-door distribution of circulars is essential to the poorly financed causes of little people."⁴¹ Solicitation by useful members of society is often for the purpose of "dissemination of ideas in accordance with the best tradition of free discussion."⁴² The Court in *Schneider*, in contrast to the writings of Professor Chafee, noted that "[p]amphlets have proved most effective instruments in the dissemination of opinion. And perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people."⁴³

Essentially, this clash of values has resulted in the conclusion that although some control of solicitation is permissible, that degree of control must be "reasonable" so as not to intrude upon staunchly protected personal freedoms. The control exerted by ordinances needs to be reasonable not only in the regulation of zealous religious colporteurs brandishing sacred scripture, but also in the regulation of secular charities and political groups. Where criminal prosecutions have been brought under statutes or ordinances requiring licenses or authorizations for charitable solicitations, or where affected parties have sought injunctive relief from such regulations, many courts have stated that it is within the police power of the state or municipality to regulate solicitation of funds for charitable purposes.⁴⁴

38. Z. CHAFEE, *FREE SPEECH IN THE UNITED STATES* 406 (1941).

39. *Martin v. City of Struthers*, 319 U.S. at 145.

40. *Id.* at 146.

41. *Id.*

42. *Id.* at 145.

43. 308 U.S. 147, 164 (1939).

44. *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *National Foundation v. City of Fort Worth*, 415 F.2d 41 (5th Cir. 1969), *cert. denied*, 396 U.S. 1040 (1970); *Eye Dog Foundation v. State Bd. of Guide Dogs for the Blind*, 67 Cal. 2d 536, 432 P.2d 717, 63 Cal. Rptr. 21 (1967); *Ex parte Williams*, 345 Mo. 1121, 139 S.W.2d 485, *cert. denied*, 311 U.S. 675 (1940); *People ex rel. Friedman v. Framer*, 208 Misc. 236, 139 N.Y.S.2d 331 (Magis. Ct. 1954); *Cincinnati v. Epley*, 116 Ohio App. 245, 185 N.E.2d 483 (1962); *Ex parte White*, 56 Okla. Crim. 418,

There is no absolute right to go door to door seeking funds for charity without reasonable state regulation.⁴⁵

Solicitation by religious groups probably has engendered the greatest amount of litigation challenging such regulations. Sects such as the Jehovah's Witnesses and the Seventh Day Adventists, as well as members of the Unification Church, have utilized door-to-door evangelism as a primary means of spreading their religious beliefs. Their canvassing of residential areas has led to numerous conflicts between existing solicitation regulations and first amendment rights of free speech, religion, and press.⁴⁶ It is important to remember that freedom of the press contemplates not only the right to print material, but also the right to distribute it.⁴⁷

The Jehovah's Witnesses, or Watch Tower Bible and Tract Society, has been particularly visible in the area of religious solicitation litigation, because its canvassing includes the *sale* of religious tracts. The issue arising repeatedly has been whether these sales constitute commercial activity so as to cause them to be subject to stricter governmental control. Most courts have held that, when properly construed and applied, ordinances controlling commercial solicitation will not apply to an itinerant evangelist preaching door to door and offering to sell or take orders for religious publications. Sales by Jehovah's Witnesses and other religious groups have been held to be only incidental to the dissemination of their religious ideas, and thus, outside the control of commercial solicitation regulation.⁴⁸ *State v. Mead*⁴⁹ provided a description of a typical pattern of activity by evangelists that supports this ruling:

[After knocking, if] granted admission, they sought, by word of mouth and printed booklets and, in some instances, by playing

41 P.2d 488 (1935); *Commonwealth v. Creighton* (Everett), 111 Pa. Super. Ct. 302, 170 A. 720 (1934); *Terrell v. State*, 210 Tenn. 632, 361 S.W.2d 489 (1962); *Seattle v. Rogers*, 6 Wash. 2d 31, 106 P.2d 598 (1940).

45. *National Foundation v. City of Fort Worth*, 415 F.2d 41, 45 (5th Cir. 1969), *cert. denied*, 396 U.S. 1040 (1970).

46. See Haverton, *Jehovah's Witnesses and the Federal Constitution*, 17 MISS. L.J. 347 (1946); Owen, *Jehovah's Witnesses and Their Four Freedoms*, 14 U. DET. L.J. 111 (1951); Note, *Constitutional Law—Jehovah's Witnesses*, 22 NOTRE DAME LAW. 82, 82-91 (1946).

47. *Martin v. City of Struthers*, 319 U.S. 141, 143 (1943); *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938); *Zimmerman v. Village of London*, 38 F. Supp. 582, 584 (S.D. Ohio 1941); *Dulaney v. Municipal Court*, 11 Cal. 3d 77, 83, 520 P.2d 1, 5, 112 Cal. Rptr. 777, 781 (1974).

48. *Tate v. Akers*, 565 F.2d 1166, 1170 (10th Cir. 1977); *State v. Mead*, 230 Iowa 1217, 1220, 300 N.W. 523, 524 (1941); *People v. Barber*, 289 N.Y. 378, 384-85, 46 N.E.2d 329, 332 (1943); *State v. Meredith*, 197 S.C. 351, 354, 15 S.E.2d 678, 679 (1940).

49. 230 Iowa 1217, 300 N.W. 523 (1941).

record transcripts on a phonograph, to disseminate the doctrines and teachings of the order. At such homes, as well as those to which admission was not secured, householders were offered small packages of the booklets for which they were asked to contribute or pay the sum of 10 cents. If they declined, a booklet was offered them without charge.⁵⁰

All receipts were placed in a publication fund which was wholly inadequate to cover the cost of publication, while the ministers worked without compensation and traveled at their own expense.

Many decisions concerning this issue of incidental sales have involved attempts to prosecute members of the Jehovah's Witnesses under ordinances of the "Green River" type.⁵¹ Some of these courts, by concluding that the ordinance was inapplicable to the activities of the Witnesses because those activities were not commercial, avoided questions relating to the constitutional validity of such ordinances.⁵²

Members of the Holy Spirit Association for the Unification of World Christianity were held in *Evans v. Fullard*⁵³ not to be selling goods, and therefore, not required to obtain a license. The canvassers gave flowers and candy to those who made contributions to them as they went door to door. The court determined that this sales activity was very minor and only incidental to the propagation of this sect's faith; thus, these persons need not register under the commercial solicitation ordinance. The court declined to rule on the freedom of religion issue because this solicitation of donations did not fall within the purview of commercial regulation.

In *Murdock v. Pennsylvania*,⁵⁴ another action involving Jehovah's Witnesses, the Supreme Court emphasized the distinction between purely commercial and religious activities. The mere fact that these traveling preachers sell their religious literature rather than give it away, the Court determined, does not transform their evangelism into a business enterprise. Noting the small donation solicited for such pamphlets compared to the cost of printing, and the unpaid work of the Witnesses, the Court reasoned that "[f]reedom of speech, freedom of the press, freedom of religion are available to all, not merely those who can pay their own way."⁵⁵

50. *Id.* at 1218-19, 300 N.W. at 524.

51. See note 15 and accompanying text *supra*.

52. See *Anchorage v. Berry*, 145 F. Supp. 868 (D. Alaska 1956); *Darby v. Colorado Springs*, 40 F. Supp. 15 (D. Colo. 1941); *Shreveport v. Teague*, 200 La. 679, 8 So. 2d 640 (1942); *Ex parte Luehr*, 159 Tex. Crim. 566, 266 S.W.2d 375 (1954); *Green River v. Martin*, 71 Wyo. 81, 254 P.2d 198 (1953); Annot., 77 A.L.R.2d 1216 (1961).

53. 444 F. Supp. 1334 (W.D. Pa. 1978).

54. 319 U.S. 105 (1943), noted in Comment, *Expanding Civil Liberties in the Supreme Court*, 22 TEX. L. REV. 230 (1944); 18 IND. L.J. 314 (1943).

55. 319 U.S. at 111.

Murdock involved the use of another tactic in an attempt to control this group. The city of Jeannette, Pennsylvania, had an ordinance requiring all persons who wished to solicit to pay certain sums in order to obtain a license. The cost of the license varied with the length of time the individual planned to solicit; daily or weekly rates, for up to three weeks of door-to-door work, were granted.⁵⁶ The Supreme Court ruled that such fee schedules violated freedom of speech, press, and religion when used to control religious solicitation. The Court distinguished this ordinance from one merely requiring registration of strangers in the community⁵⁷ or one imposing a nominal fee as a regulatory measure to defray "the expense of policing the activities in question."⁵⁸ The "power to tax the exercise of a privilege is the power to control or suppress its enjoyment."⁵⁹ Whether this restriction was imposed only in residential areas or throughout the whole city was deemed *not* an important distinction by the Court.⁶⁰

The question most often raised in challenges of rules regulating door-to-door activity has been whether there is vested in the controlling authority an inordinate amount of discretion to determine who may and who may not go from house to house. "[S]uch police regulation must have a relation to the welfare, safety, or health of a community and cannot be arbitrarily, indiscriminately or whimsically exercised for reasons which have no relationship with such objectives."⁶¹ Powers to be exercised by an official must be narrowly drawn within a solicitation ordinance so that the important interests of protecting citizens from crime and undue annoyance may be served without determining what messages residents may hear.⁶² Statutes or ordinances which delegate to public officials the authority "to license conduct protected by the First Amendment must set forth definite, objective guidelines for the issuance of such licenses."⁶³ When first amendment rights are involved, courts will not presume that a licensing authority will perform its duty in a fair and impartial way.⁶⁴ The Missouri Supreme

56. *Id.* at 106.

57. See notes 89-112 and accompanying text *infra*.

58. 319 U.S. at 113-14. "The constitutional difference between such a regulatory measure and a tax on the exercise of a federal right has long been recognized." *Id.* at 114 n.8. See *Cox v. New Hampshire*, 312 U.S. 569, 576-77 (1941).

59. 319 U.S. at 112. See *A. Magnano Co. v. Hamilton*, 292 U.S. 40 (1934). See also *Follett v. Town of McCormick*, 321 U.S. 573 (1944); *Jones v. Opelika*, 319 U.S. 103 (1943) (per curiam).

60. 319 U.S. at 117.

61. *American Cancer Soc'y v. City of Dayton*, 160 Ohio St. 114, 122-23, 114 N.E.2d 219, 224 (1953).

62. *Hynes v. Mayor of Oradell*, 425 U.S. 610, 616-19 (1976).

63. *Perrine v. Municipal Court*, 5 Cal. 3d 656, 661-62, 488 P.2d 648, 650, 97 Cal. Rptr. 320, 322 (1971), *cert. denied*, 404 U.S. 1038 (1972).

64. *In re Porterfield*, 28 Cal. 2d 91, 112, 168 P.2d 706, 719 (1946) (ordinance required a labor organizer to purchase a license to solicit for new union

Court upheld the application of a city ordinance denying a permit to solicit where clear standards and guidelines were provided for the administrative official to use in determining whether the applicant's religious or charitable cause merited such a license.⁶⁵

Courts have held generally that an administrative officer may not determine by his own unguided judgment whether a group has in fact a religious, charitable, political, or philanthropic object.⁶⁶ It is up to the individual in his home to decide whether the group approaching his door is worthy of patronage. If an official is empowered to license, he will not be allowed to base his decision upon whether he believes that this is the type of person who should distribute information from house to house,⁶⁷ whether he feels that the cause is "proper or advisable,"⁶⁸ or whether he deems this potential solicitor to be of "good moral character."⁶⁹ "Censorship, when done in the guise of determining moral character, is no less censorship and may not be employed as a basis for inhibiting freedom of expression."⁷⁰ One fear that arises when a licensing official is given wide discretion to grant or to deny permits to solicit is that the official will base his decision upon his own opinion of the content of the ideas sought to be expressed.⁷¹ His personal feelings, unguided by strict statutory standards, should not be relevant. A long line of cases supports this principle that an ordinance

members, and licensing board could issue the permit if it deemed the applicant to be of good moral character; court ruled that where free speech or any other fundamental right is involved, the presumption of proper action by the licensing authority cannot be relied upon); *Aaron v. Municipal Court*, 73 Cal. App. 3d 596, 609, 140 Cal. Rptr. 849, 856-57 (1977) (court rejected presumption advanced by city that licensing authority would perform its duty in a fair and impartial manner where vague standards were provided for the solicitation commission to determine who could obtain a license to solicit). *See also* discussion concerning vagueness notes 127-41 and accompanying text *infra*.

65. *Ex parte Williams*, 345 Mo. 1121, 1127, 139 S.W.2d 485, 488-89, *cert. denied*, 311 U.S. 675 (1940).

66. *See Tucker v. Texas*, 326 U.S. 517, 518-21 (1946); *Cantwell v. Connecticut*, 310 U.S. 296, 303-05 (1940); *Schneider v. State (Town of Irvington)*, 308 U.S. 147, 164 (1939); *Ex parte Dart*, 172 Cal. 47, 53, 155 P. 63, 65 (1916); *Annot.*, 76 A.L.R.3d 924, 937-40 (1977). *See also Hoover v. State*, 161 Tex. Crim. 642, 645, 279 S.W.2d 859, 861 (1955).

67. *Schneider v. State (Town of Irvington)*, 308 U.S. 147, 164 (1939).

68. *Largent v. Texas*, 318 U.S. 418, 422 (1943).

69. *Schneider v. State (Town of Irvington)*, 308 U.S. 147, 164 (1939); *In re Porterfield*, 28 Cal. 2d 91, 111-12, 168 P.2d 706, 719 (1946); *Village of South Holland v. Stein*, 373 Ill. 472, 474, 26 N.E.2d 868, 868 (1940). *See also Hoover v. State*, 161 Tex. Crim. 642, 645, 279 S.W.2d 859, 861 (1955).

70. *City of Bowling Green v. Lodico*, 11 Ohio St. 2d 135, 137, 228 N.E.2d 325, 327 (1967). *See Konigsberg v. State Bar*, 353 U.S. 252, 269 (1957).

71. *Aaron v. Municipal Court*, 73 Cal. App. 3d 596, 601, 140 Cal. Rptr. 849, 852 (1977).

should not vest in an official the power to determine arbitrarily and capriciously whether a peaceful enjoyment of constitutionally protected freedoms shall be restrained.⁷²

The case of *Lovell v. City of Griffin*⁷³ involved a challenge to a Georgia city ordinance prohibiting the distribution of circulars, handbooks, or literature of any kind without a permit. The regulation had no time and place limitations written into it, and provided that the permit could not be obtained without written permission of the city manager. There was no language restricting the powers of the city manager. Thus, the ordinance effected much more than simply a restriction on the time, place, or manner of distribution; instead, it gave the official an ability to arbitrarily deny the right of free press.⁷⁴ The Supreme Court held the ordinance void on its face as the regulation struck at the very foundation of freedom of the press. The Court wrote that legislation of this type, containing such uncontrolled official discretion, "would restore the system of license and censorship in its baldest form."⁷⁵ Elimination of previous restraint on publication was a leading purpose for the inclusion of freedom of the press in the first amendment.⁷⁶

*Cantwell v. Connecticut*⁷⁷ involved Jehovah's Witnesses traversing New Haven engaging in solicitation.⁷⁸ Newton Cantwell and his two sons

72. See, e.g., *Hynes v. Mayor of Oradell*, 425 U.S. 610, 616-19 (1976); *Staub v. City of Baxley*, 355 U.S. 313, 322 (1958); *Kunz v. New York*, 340 U.S. 290, 295 (1951); *Saia v. New York*, 334 U.S. 558, 560 (1948); *Cantwell v. Connecticut*, 310 U.S. 296, 307 (1940); *Schneider v. State (Town of Irvington)*, 308 U.S. 147, 164 (1939); *Lovell v. City of Griffin*, 303 U.S. 444, 450-52 (1938); *Dulaney v. Municipal Court*, 11 Cal. 3d 77, 86, 520 P.2d 1, 6-7, 112 Cal. Rptr. 777, 784 (1974).

73. 303 U.S. 444 (1938). Alma Lovell was the earliest arrival in the succession of Jehovah's Witnesses who have litigated in the United States Supreme Court the question of a first amendment right to engage in religious solicitation.

74. Mrs. Lovell, who distributed religious tracts, did not apply for a permit because she regarded herself as being sent "by Jehovah to do His work" and felt that applying for a permit would have been "an act of disobedience to His commandment." *Id.* at 448. Other cases indicate that this is not an uncommon attitude among the Jehovah's Witnesses. See *Largent v. Texas*, 318 U.S. 418, 420 (1943); *Tucker v. Randall*, 18 N.J. Misc. 675, 676, 15 A.2d 324, 325 (1940).

75. 303 U.S. at 452.

76. See *Grosjean v. American Press Co.*, 297 U.S. 233, 245 (1936); *Patterson v. Colorado*, 205 U.S. 454, 462 (1907).

77. 310 U.S. 296 (1940), noted in *Constitutional Law—Fourteenth Amendment—Religious Liberty*, 40 COLUM. L. REV. 1067 (1940); *Constitutional Law—Constitutionality of Statute Permitting State Licensing Official to Pass on Religious Nature of Cause*, 89 U. PA. L. REV. 515 (1941).

78. Employing the same procedure as was used by the canvassers in *State v. Mead* (see notes 47 & 48 and accompanying text *supra*), the solicitors, the Court noted, were working "a thickly populated neighborhood where about ninety per-

were criminally charged under a statute that forbade solicitation "for any alleged religious, charitable or philanthropic cause," unless the cause had been "approved by the secretary of the public welfare counsel."⁷⁹ The secretary was to determine whether a bona fide cause was involved; if so, he would issue a certificate revocable at any time.

The Supreme Court held that the statute deprived the Cantwells of religious liberty without due process of law. Freedom of religion is the freedom to act as well as to believe. This regulation was a prior restraint; it did more than regulate the time, place, and manner of solicitation. If, purely upon the exercise of one official's judgment, the cause was determined not to be truly religious, the group was absolutely prohibited from soliciting. "Such a censorship of religion as the means of determining its right to survive is a denial of liberty protected by the First Amendment and included in the liberty which is within the protection of the Fourteenth."⁸⁰ The Court rejected the state's contention that any constitutional defect was corrected by the availability of judicial review; the system still was one of previous restraint.

Uncontrolled official discretion likewise was the basis for the invalidation of ordinances in *Schneider v. State (Town of Irvington)*⁸¹ and *Largent v. Texas*.⁸² A Jehovah's Witness challenged the regulation in *Schneider*, which required house-to-house canvassers and solicitors to obtain a written permit from the chief of police. The permit was not to issue if it were decided that "the canvasser . . . [was] not of good character or . . . [was] canvassing for a project not free from fraud."⁸³ As written, the ordinance applied equally to commercial and noncommercial canvassers. It banned unlicensed door-to-door communication of any view or the advocacy of any cause. The ordinance was held to violate freedoms of speech and press when applied to noncommercial canvassers. The Court lumped charitable solicitation with solicitation in the name of religion; thus, protections given charitable groups going door to door would rise to the level of those afforded religious and political freedoms rather than be lowered to the level given to speech that is characterized as commercial. The Court in *Largent*, faced with another appearance by a Witness, cited *Lovell*, *Schneider*, and *Cantwell* in holding unconstitutional an ordinance which

cent of the residents were Roman Catholics." 310 U.S. at 301. The phonograph record used included an attack upon the Catholic religion. This brazen manner of dissemination is the sort that prompted Professor Chafee to comment that the Jehovah's Witnesses were "a sect distinguished by great religious zeal and astonishing powers of annoyance." Z. CHAFFEE, *supra* note 38, at 399.

79. 310 U.S. at 301-02.

80. *Id.* at 305.

81. 308 U.S. 147 (1939), noted in *Constitutional Law—Freedom of Speech and Press—Handbill Ordinances*, 6 MO. L. REV. 103 (1941).

82. 318 U.S. 418 (1943).

83. 308 U.S. at 158.

allowed a mayor unguided discretion in the issuance of permits to solicit. Such permits would issue if he deemed it "proper and advisable."⁸⁴ Other cases involving Jehovah's Witnesses' violations of solicitation regulations have held that neither a company town⁸⁵ nor a federally managed village of defense workers⁸⁶ may require evangelists to obtain permission from officials to solicit.

Discretion, although of a different type, again was the key issue when the Witnesses appealed to the Supreme Court in *Martin v. City of Struthers*.⁸⁷ The Court struck down a city ordinance that made it unlawful for a solicitor or canvasser to ring the doorbell or knock on the door of a private home to distribute literature to the residents. The discretion in question was the citizens' lack of discretion: the substitution of "the judgment of the community for the judgment of the individual householder."⁸⁸ Freedom to distribute information to every citizen wherever he desires to receive it was deemed vital; such naked restriction of the dissemination of ideas, as this ordinance stipulated, could "serve no purpose but that forbidden by the Constitution."⁸⁹ In denying in such a peremptory fashion the possibility of distribution of literature, the community, the Court felt, had its priorities ordered badly. Strict regulation had become more important than the exercise of first amendment rights. Justice Murphy's concurring opinion made a significant comment upon this: "[F]reedom of religion has a higher dignity under the Constitution than municipal or personal convenience."⁹⁰

The main component of any ordinance that attempts to control door-to-door activity is a requirement that parties applying for a permit supply identification. The United States Supreme Court has indicated that this is a permissible requirement, at least in the situation of solicitation of funds. In *Cantwell v. Connecticut*,⁹¹ the Court wrote: "Without doubt a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent."⁹² That a state or local government may regulate canvassers by identification devices was reiterated in *Martin v. City of Struthers*⁹³ and *Hynes v. Mayor of Oradell*.⁹⁴ *Murdock v. Pennsyl-*

84. 318 U.S. at 422.

85. *Marsh v. Alabama*, 326 U.S. 501 (1946).

86. *Tucker v. Texas*, 326 U.S. 517 (1946).

87. 319 U.S. 141 (1943).

88. *Id.* at 144.

89. *Id.* at 147.

90. *Id.* at 151-52 (Murphy, J., concurring).

91. 310 U.S. 296 (1940).

92. *Id.* at 306.

93. 319 U.S. 141, 148 (1943).

94. 425 U.S. 610, 618 (1976), cited in Young, *Supreme Court Report*, 62 A.B.A.J. 1027, 1029 (1976).

*vania*⁹⁵ distinguished as unconstitutional a license tax upon registration to solicit, rather than a registration system where "those going from house to house are required to give their names, addresses and other marks of identification to the authorities."⁹⁶

Cantwell, Martin, and Murdock all involved Jehovah's Witnesses in their accustomed role. Hence, the Supreme Court has hinted that a requirement of mere registration of those engaged in religious canvassing with incidental solicitation of funds does not infringe upon constitutional rights.⁹⁷

In *Hynes*, political campaign workers contacted householders, but apparently no fund raising was involved. While the majority opinion did not concern itself extensively with the requirement of identification, Justice Brennan in his concurring opinion joined by Justice Marshall made a strong argument that an ordinance requiring a political canvasser to identify himself discourages free speech. The importance of the preservation of anonymity in a "door-to-door exposition of ideas"⁹⁸ was asserted by Justice Brennan. He cited *Talley v. California*,⁹⁹ where the Court invalidated a Los Angeles ordinance requiring handbills to display the names and addresses of persons writing, printing, or distributing them. *Talley* dealt vehemently with the question of freedom of expression:

Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind. Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all. . . . Even the Federalist Papers, written in favor of the adoption of our Constitution, were published under fictitious names. It is plain that anonymity has sometimes been assumed for the most constructive purposes.¹⁰⁰

Justice Brennan argued in *Hynes* that requiring identification of those engaged in door-to-door canvassing might constrain such activity; the fear of reprisal could deter free exposition of controversial issues. Examples of volatile topics were mentioned in which a canvasser, faced with a requirement of identification, might fear retaliation: civilian police review boards, the decriminalization of certain types of conduct, and the recall of an elected police official.¹⁰¹ Brennan noted that, unfortunately, apprehension of reprisal may be well founded. There have been in recent years "many instances of penalties for controversial expression in the form of

95. 319 U.S. 105 (1943).

96. *Id.* at 113.

97. See *Lansdale Borough v. Phillips*, 66 Montg. County L. Rep. 329, 334, 42 Pa. Munic. L. Rep. 137, 142 (1950).

98. 425 U.S. 610, 625 (1976) (Brennan, J., concurring).

99. 362 U.S. 60 (1960).

100. *Id.* at 64-65.

101. 425 U.S. at 625-26 (Brennan, J., concurring).

vindictive harassment, discriminatory law enforcement, executive abuse of administrative powers, and intensive government surveillance."¹⁰² These occurrences take on a particularly threatening aura when it is remembered that the first amendment affords its broadest protection to political speech, to assure that the free exchange of ideas will bring about desired social and political changes.¹⁰³ The Supreme Court had noted in an earlier opinion that any rule that would limit orderly discussion at an appropriate time and place must be warranted by an impending or actual public danger.¹⁰⁴

In a footnote to his concurring opinion in *Hynes*,¹⁰⁵ Justice Brennan questioned Justice Black's "passing remark"¹⁰⁶ in *Martin* that "[a] city can . . . by identification devices control the abuse of the privilege by criminals posing as canvassers."¹⁰⁷ Brennan noted two later decisions, *Talley v. California*¹⁰⁸ and *Thomas v. Collins*,¹⁰⁹ which both spoke of the oppressive aspects of a requirement of identification.¹¹⁰ He also pointed out that a *Martin* footnote implied that such a requirement would be valid only when applied to "a stranger in the community" who requests permission to "solicit funds."¹¹¹ Justice Brennan's footnotes in his concurring opinion in *Hynes* related that an Oradell, New Jersey, type ordinance, which would require a person desiring to canvass for a political cause to notify the police department in writing "for identification only,"¹¹² would imperil first amendment rights if the applicant were not seeking funds.

Justice Rehnquist's dissenting opinion in *Hynes* asserted "that none of our cases have ever suggested that a regulation requiring only identification of canvassers or solicitors would violate any constitutional limitation."¹¹³ Yet, he cited for support only *Cantwell* and *Martin*,¹¹⁴ both involving religious canvassing with incidental solicitation of contributions.

102. *Id.* at 626 (Brennan, J., concurring).

103. *Roth v. United States*, 354 U.S. 476, 484 (1957).

104. *Thomas v. Collins*, 323 U.S. 516, 530 (1945).

105. 425 U.S. at 628 n.4 (Brennan, J., concurring).

106. *Id.*

107. 319 U.S. 141, 148 (1943).

108. 362 U.S. 60 (1960).

109. 323 U.S. 516 (1945).

110. *Talley* involved distribution of handbills on streets and in public areas, not door-to-door. *Thomas* concerned union organizers speaking in public. A lower Pennsylvania court distinguished *Thomas* from the activity of the Jehovah's Witnesses, emphasizing the greater criminal danger inherent in door-to-door solicitation. *Lansdale Borough v. Phillips*, 66 Montg. County L. Rep. 329, 335, 42 Pa. Munic. L. Rep. 137, 144 (1950).

111. 425 U.S. at 628 n.4 (Brennan, J., concurring) (citing *Martin v. City of Struthers*, 319 U.S. 141, 148 n.14 (1943)).

112. *Id.* at 625-26 nn.1 & 2 (Brennan, J., concurring).

113. *Id.* at 631 (Rehnquist, J., dissenting).

114. *Id.*

Regardless of the eventual outcome of this dispute, Justice Brennan's distinguishing basis, seeking contributions, appears puzzling in light of the cases noted above in which identification requirements were deemed permissible. *Cantwell*, *Martin*, and *Murdock* all stemmed from activity of the Jehovah's Witnesses, whose solicitation of contributions through "sales" of religious tracts consistently has been held to be *incidental* to their main purpose of disseminating their beliefs. Because the Supreme Court has deemed this subordinate activity not to involve enough financial dealing to subject their canvassing to the supervision of commercial solicitation regulations, it seems it should not be enough for fund raising to be the distinguishing element in Justice Brennan's test.

Solicitation regulations also have been challenged on an equal protection ground, most often by private charitable groups questioning the constitutional validity of regulations requiring permits to solicit. Such cases have arisen, with very little ultimate success, in situations in which one group asserts that the requirements it must meet in order to effect compliance are more burdensome than those required of another group.

In *Eye Dog Foundation v. State Board of Guide Dogs for the Blind*,¹¹⁵ the California Supreme Court upheld a statute making it unlawful to solicit funds for any person purporting to provide guide dogs for the blind, unless that person had a license to train such animals. The plaintiff argued that the statute offended the equal protection clause of both the state and federal constitutions by imposing special licensing procedures on guide dog charities while not so regulating other charities. Maintaining that the law affected equally all persons engaged in the operation of such schools, the court remarked "that legislation is not discriminatory if it relates to and operates uniformly upon the whole of a single class, properly selected. There is no constitutional requirement of uniform treatment, but only that there be a reasonable basis for each classification."¹¹⁶

In *National Foundation v. City of Fort Worth*,¹¹⁷ religious and social groups who solicited funds solely from their own members were not made to comply with the requirements of the solicitation ordinance. The court denied an equal protection challenge to these exemptions, noting that to be constitutional the classification need only have some reasonable basis. The United States Court of Appeals for the Fifth Circuit found this classification to be neither unreasonable nor arbitrary because "[t]he consideration in such solicitations are different from solicitations from the general public on public streets and in house to house canvassers."¹¹⁸

Exemptions from solicitation statutes for certain well-recognized or local groups generally have been held not to be arbitrary or unreasonable,

115. 67 Cal. 2d 536, 432 P.2d 717, 63 Cal. Rptr. 21 (1967).

116. *Id.* at 549, 432 P.2d at 726, 63 Cal. Rptr. at 30 (citation omitted).

117. 415 F.2d 41 (5th Cir. 1969), *cert. denied*, 396 U.S. 1040 (1970).

118. *Id.* at 48.

or to deny equal protection.¹¹⁹ The exception to the rule took place in *Seattle v. Rogers*,¹²⁰ in which the challenged ordinance made it unlawful to conduct a charity campaign where a part of the proceeds was withheld for compensation, unless charity solicitation licenses were obtained at the cost of \$1,000 per charity and \$100 for each solicitor. The defendant argued that the provision of the ordinance which exempted one named group, the annual campaign for the Seattle Community Fund, was unconstitutional as discriminatory under the Washington Constitution. The city council apparently had enacted the ordinance with the opinion that the exempted charity "was worthily and honestly conducted, and resulted in benefit to the public, while many others should be classified as no better than frauds."¹²¹ The court found the exemption to be arbitrary and suggested that operation of this ordinance could result in the Community Fund campaign being allowed to proceed while permits were denied to other legitimate campaigns with admirable objectives, as well as to fraudulent campaigns. The court held the ordinance to be unconstitutional and void because of this discrimination.¹²²

Political groups which advocate a cause while incidentally seeking contributions to help promote their cause are best exemplified by citizens' environmental groups. Challenges to ordinances affecting these groups closely resemble those made by religious groups as well as those made by nonpolitical, charitable organizations. An ordinance prohibiting the solicitation of donations for charitable purposes without an invitation from the owner or occupant of a residence was challenged in *Citizens for a Better Environment v. City of Park Ridge*.¹²³ CBE went door to door in the Chicago area to inform the public of its activities concerning pollution and environmental issues, to discuss environmental problems, and to solicit contributions. The group sought injunctive relief against enforcement of the ordinance. The United States Court of Appeals for the Seventh Circuit, while noting that a city may impose reasonable regulations, reversed

119. *Commonwealth v. McDermott*, 296 Pa. 299, 303-04, 145 A. 858, 859-60 (1929); *Commonwealth v. Schuman*, 125 Pa. Super. Ct. 62, 66-67, 189 A. 503, 504-05 (1937); *Commonwealth v. Creighton* (Everett), 111 Pa. Super. Ct. 302, 305, 170 A. 720, 721 (1934); *Lansdale Borough v. Phillips*, 66 Montg. County L. Rep. 329, 336-37, 42 Pa. Munic. L. Rep. 137, 145-46 (1950); *Terrell v. State*, 210 Tenn. 632, 643-45, 361 S.W.2d 489, 493-94 (1962). *But see* *Aaron v. Municipal Court*, 73 Cal. App. 3d 596, 609-10, 140 Cal. Rptr. 849, 857 (1977) (such a provision was held to be unconstitutionally vague).

120. 6 Wash. 2d 31, 106 P.2d 598 (1940).

121. *Id.* at 37, 106 P.2d at 600.

122. *Seattle v. Rogers* was decided with a companion case, *Seattle v. Bartlett*, 6 Wash. 2d 731, 106 P.2d 601 (1940). This case, involving an unlicensed solicitor for a go-to-church fund, was consolidated with *Seattle v. Rogers* on appeal and the decision in both rested upon the same basis: the Seattle ordinance was discriminatory.

123. 567 F.2d 689 (7th Cir. 1975).

the district court's denial of a preliminary injunction and held that a city may not impose upon a nonprofit group expressing essentially political ideas a blanket prohibition on canvassing for funds.¹²⁴ This situation was distinguished by the court from the classic prohibition on commercial canvassing upheld in *Breard v. Alexandria*.¹²⁵ The Seventh Circuit wrote that a statute of this scope in a political context, despite the significant state objectives of prevention of crime and protection of householders' privacy, was "an unnecessarily broad restraint on the communication of ideas."¹²⁶

The same group reappeared in *Citizens for a Better Environment v. Village of Schaumburg*,¹²⁷ in which they had attempted, again in the Chicago area, to obtain a permit to go door to door. An ordinance provided that a permit would not be issued unless seventy-five percent of the proceeds of solicitation were used solely for charitable purposes by the organization seeking such a permit. CBE was denied a license because it failed to meet this requirement. The village argued that the seventy-five percent rule was to protect its citizens by distinguishing commercial from charitable organizations. The village also pointed out that the ordinance was not fatally flawed by vagueness or by the vesting of impermissible discretion in licensing officials.

The United States Court of Appeals for the Seventh Circuit responded that there were other possible reasons for a regulation to be held invalid besides vagueness and overly broad official discretion, and held the percentage requirement to be unreasonable as applied to this type of organization. The court felt that it was not being inconsistent with *National Foundation v. City of Forth Worth*,¹²⁸ which upheld an ordinance limiting the cost of solicitation of contributions to charity to twenty percent of the total receipts. The ordinance allowed an organization, in that case a non-political, charitable group that did not meet the twenty percent limit, to show that its own percentage was not unreasonable. *National Foundation* recognized that a fixed percentage limitation for a broad class of charitable organizations would be difficult to justify.

*Hynes v. Mayor of Oradell*¹²⁹ presents the clearest case of canvassing door to door for the purpose of purely political speech. Fund raising was not even mentioned by those who challenged the ordinance. In contrast to Justice Brennan's many qualms in *Hynes* over identification requirements, Chief Justice Burger expressed none. For the majority the determining factor was the vagueness of the ordinance. Hence, another possible vehicle for challenge to canvassing and solicitation regulations has been brought to the forefront.

124. *Id.* at 692.

125. 341 U.S. 622 (1951).

126. 567 F.2d 689, 692 (7th Cir. 1975).

127. 590 F.2d 220 (7th Cir. 1978), *aff'd*, 100 S. Ct. 826 (1980).

128. 415 F.2d 41 (5th Cir. 1969), *cert. denied*, 396 U.S. 1040 (1970).

129. 425 U.S. 610 (1976). See notes 94-114 and accompanying text *supra*.

A statute which either forbids or dictates the doing of an act in terms so ambiguous "that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential due process of law."¹³⁰ This is the test for unconstitutional vagueness. "Vague laws may trap the innocent by not providing fair warning. . . . A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application."¹³¹ Courts look especially close at vague laws when they may have an effect on first amendment rights.¹³²

In *Hynes*, where the ordinance being contested required potential canvassers for charitable or political causes to notify the police department in writing for identification only,¹³³ the majority ruled that the regulation failed to meet the test of specificity articulated for the first amendment area.¹³⁴ The challenge was to the meaning of phrases in the ordinance—"recognized charitable cause," "Federal, State, County or municipal . . . cause," "Borough Civic Groups and Organizations"—and all were deemed unclear.¹³⁵ Since the rule did not dictate what sort of written identification was to be provided to the police, the phrase "notify the Police Department, in writing, for identification only" also was held to be vague.¹³⁶

A California Court of Appeals in *Aaron v. Municipal Court*¹³⁷ likewise used vagueness as a basis for overturning an ordinance requiring anyone soliciting anything of value on the representation that it was for a charitable purpose to obtain a permit. Relying on *Hynes*, the *Aaron* court remarked that the investigation provision of the ordinance, which gave a commission the power to issue a permit if satisfied "that such purpose is worthy and not incompatible with the public interest" and "that the applicant and other persons engaged in such solicitation are of good character," was unconstitutionally vague.¹³⁸ Another provision found to be vague was the passage which gave the commission discretion to waive requirements "where the applicant is known to be a *bona fide* charitable organization of recognized integrity and long standing as such."¹³⁹

130. *Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926). *See also* *People v. Barksdale*, 8 Cal. 3d 320, 327, 503 P.2d 257, 262, 105 Cal. Rptr. 1, 6 (1972).

131. *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972) (footnotes omitted).

132. *Ashton v. Kentucky*, 384 U.S. 195, 200 (1966).

133. *See* notes 98-114 and accompanying text *supra*.

134. 425 U.S. 610, 620-22 (1976). "[G]overnment may regulate . . . only with narrow specificity." *NAACP v. Button*, 371 U.S. 415, 433 (1963).

135. 425 U.S. at 621.

136. *Id.*

137. 73 Cal. App. 3d 596, 140 Cal. Rptr. 849 (1977).

138. *Id.* at 608-09, 140 Cal. Rptr. at 856.

139. *Id.* at 609-10, 140 Cal. Rptr. at 857. *See also* *Perrine v. Municipal*

These cases in which vagueness was the basis for challenging an ordinance are similar to those opinions mentioned earlier in which unbridled discretion in licensing officials was deemed to threaten arbitrary and capricious enforcement.¹⁴⁰ *Aaron v. Municipal Court* noted this relationship.¹⁴¹

While under appropriate circumstances there probably are many ordinances ripe for challenge by a canvasser or solicitor,¹⁴² a person faced with an unconstitutional licensing law could choose to ignore it. He could engage "with impunity in the exercise of the right of free expression for which the law purports to require a license, and he is not precluded from attacking its constitutionality because he has not applied for a permit."¹⁴³

The cases discussed in this Comment have indicated that the courts tend generally to resolve doubts in favor of noncommercial canvassers or solicitors going door to door over the demands for control by a state or local government. Not surprisingly, there has been dissatisfaction with this policy tendency. Professor Chafee leveled an attack at the highest court in the land:

Freedom of the home is as important as freedom of speech. I cannot help wondering whether the Justices of the Supreme Court are quite aware of the effect of organized front-door intrusion upon people who are not sheltered from zealots and imposters by a staff of servants or the locked entrance of an apartment house.¹⁴⁴

Court, 5 Cal. 3d 656, 661-62, 488 P.2d 648, 650-51, 97 Cal. Rptr. 320, 322-23 (1971), *cert. denied*, 404 U.S. 1038 (1972).

140. See notes 61-90 and accompanying text *supra*.

141. 73 Cal. App. 3d at 609, 140 Cal. Rptr. at 856-57.

142. The Columbia, Missouri, regulation of solicitors and canvassers appears to be such an ordinance. COLUMBIA, MO., CODE §§ 7.3000-.3090 (1978). Provisions exempting "recognized charitable organizations" and "bona fide non-profit charitable, educational, political, social welfare or religious organizations," *id.* § 7.3010(B), from the terms of the ordinance might not survive attacks using a vagueness theory. Though the regulation is meant only to apply to commercial solicitation, this vagueness could lead to application of certain questionable provisions to a noncommercial applicant. These provisions authorize the license inspector to examine the applicant's "character or business responsibility"; if he deems either to be unsatisfactory, a permit to solicit will not be issued. *Id.* § 7.3030. Elements of the ordinance lend themselves easily to arbitrary enforcement, and the opportunity for the unbridled exercise of discretion on the part of the official is evident.

143. *Aaron v. Municipal Court*, 73 Cal. App. 3d 596, 599 n.2, 140 Cal. Rptr. 849, 850 n.2 (1977). See *Shuttlesworth v. Birmingham*, 394 U.S. 147, 151 & n.2 (1969); *Freedman v. Maryland*, 380 U.S. 51, 55-56 (1965); *Staub v. City of Baxley*, 355 U.S. 313, 318-19 (1958); *Burton v. Municipal Court*, 68 Cal. 2d 684, 687-88, 441 P.2d 281, 284, 68 Cal. Rptr. 721, 724 (1968).

144. Z. CHAFEE, *supra* note 38, at 407. As one writer has commented:

The net result of this sequence of decisions is that the Jehovah's Wit-

In noncommercial door-to-door visitation, the importance of the freedoms detailed in the first amendment often have been held to outweigh the annoyances noted by Professor Chafee. These rights are most vital to the free expression and exchange of ideas, the constitutional life's blood of society, and should be afforded this preferential treatment.

ROBERT E. PINNELL

nesses enjoy four freedoms: freedom of the press, freedom of speech, freedom of religion, all of them guaranteed by the Constitution, and freedom to invade the rights of others, guaranteed to them by the majority of the members of the Supreme Court.
 Owen, *supra* note 46, at 134.